

Executive Summary – Enforcement Matter – Case No. 43785
Diamond S Cattle Company
RN105708069
Docket No. 2012-0672-IWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

IWD

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Portable Rock Crushing Plant FM 919 Site, located on the east side of Farm-to-Market ("FM") Road 919, approximately 0.5 mile south of the junction of FM 919 and U.S. Highway 180, Palo Pinto County

Type of Operation:

Quarry and portable rock crusher

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 10, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,250

Amount Deferred for Expedited Settlement: \$2,650

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$10,600

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002 and September 2011

Executive Summary – Enforcement Matter – Case No. 43785
Diamond S Cattle Company
RN105708069
Docket No. 2012-0672-IWD-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: February 28, 2012

Date(s) of NOE(s): March 7, 2012

Violation Information

Failed to submit monitoring results at the intervals specified in the permit. Specifically, Respondent failed to submit discharge monitoring reports (“DMRs”) for the monitoring periods ending January 31, 2011; February 28, 2011; March 31, 2011; April 30, 2011; May 31, 2011; June 30, 2011; July 31, 2011; August 31, 2011; September 30, 2011; October 31, 2011; November 30, 2011; and December 31, 2011, by the 20th day of the following month [30 TEX. ADMIN. CODE §§ 305.125(1), 305.125(17), and 319.7(d), and Texas Pollutant Discharge Elimination System Permit No. WQ0004878000, Monitoring and Reporting Requirements No. 1].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require Respondent to:

a. Within 30 days:

i. Update the Facility’s operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of completed, signed, and certified monthly DMRs.

ii. Submit the missing DMRs for the monitoring periods ending on January 31, 2011; February 28, 2011; March 31, 2011; April 30, 2011; May 31, 2011; June 30, 2011; July 31, 2011; August 31, 2011; September 30, 2011; October 31, 2011; November 30, 2011; and December 31, 2011.

b. Within 45 days, submit certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Executive Summary – Enforcement Matter – Case No. 43785
Diamond S Cattle Company
RN105708069
Docket No. 2012-0672-IWD-E

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Steve Villatoro, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-4930; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: Bob R. Simpson, President, Diamond S Cattle Company, 6608 Bryant
Irvin Road, Fort Worth, Texas 76132

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES

Assigned
PCW

12-Mar-2012
21-Jun-2012

Screening 13-Mar-2012

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Diamond S Cattle Company
Reg. Ent. Ref. No. RN105708069
Facility/Site Region 4-Dallas/Fort Worth

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 43785
Docket No. 2012-0672-IWD-E
Media Program(s) Water Quality
Multi-Media

No. of Violations 1
Order Type 1660
Government/Non-Profit No
Enf. Coordinator Steve Villatoro
EC's Team Enforcement Team 1

Admin. Penalty \$ Limit Minimum \$0 Maximum \$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$6,250

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0.0% Enhancement

Subtotals 2, 3, & 7 \$0

Notes

No adjustment for compliance history.

Culpability

No

0.0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments

Subtotal 5 \$0

Economic Benefit

Total EB Amounts \$0
Approx. Cost of Compliance \$0

0.0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6 \$0

SUM OF SUBTOTALS 1-7

Final Subtotal \$6,250

OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$6,250

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$6,250

DEFERRAL

20.0%

Reduction

Adjustment -\$1,250

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$5,000

Screening Date 13-Mar-2012

Docket No. 2012-0672-IWD-E

PCW

Respondent Diamond S Cattle Company

Policy Revision 3 (September 2011)

Case ID No. 43785

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105708069

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (<i>number of counts</i>) | 0 | 0% |
| Emissions | Chronic excessive emissions events (<i>number of events</i>) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 13-Mar-2012

Docket No. 2012-0672-IWD-E

PCW

Respondent Diamond S Cattle Company

Policy Revision 3 (September 2011)

Case ID No. 43785

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105708069

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 305.125(1), 305.125(17) and 319.7(d), and Texas Pollutant Discharge Elimination System Permit No. WQ0004878000, Monitoring and Reporting Requirements No. 1

Violation Description

Failed to submit monitoring results at the intervals specified in the permit, as documented during a record review conducted on February 28, 2012. Specifically, the Respondent failed to submit Discharge Monitoring Reports ("DMRs") for the monitoring periods ending August 31, 2011; September 30, 2011; October 31, 2011; November 30, 2011; and December 31, 2011, by the 20th day of the following month.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Major | Harm | Minor |
|-----------|-------|------|-------|
| Actual | | | |
| Potential | | | |

Percent 0.0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
| | x | | |

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 5

175 Number of violation days

mark only one
with an x

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty \$6,250

Five monthly events are recommended, one for each DMR.

Good Faith Efforts to Comply

0.0% Reduction

\$0

| | Before NOV | NOV to EDPRP/Settlement Offer |
|---------------|------------|-------------------------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | x | (mark with x) |

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$6,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$6,250

This violation Final Assessed Penalty (adjusted for limits) \$6,250

Economic Benefit Worksheet

Respondent Diamond S Cattle Company

Case ID No. 43785

Reg. Ent. Reference No. RN105708069

Media Water Quality

Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|--|--|--|------|-----|-----|-----|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

See economic benefit on the accompanying PCW.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES

Assigned

12-Mar-2012

PCW

21-Jun-2012

Screening

13-Mar-2012

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Diamond S. Cattle Company

Reg. Ent. Ref. No. RN105708069

Facility/Site Region 4-Dallas/Fort Worth

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 43785

Docket No. 2012-0672-IWD-E

Media Program(s) Water Quality

Multi-Media

No. of Violations 1

Order Type 1660

Government/Non-Profit No

Enf. Coordinator Steve Villatoro

EC's Team Enforcement Team 1

Admin. Penalty \$ Limit Minimum \$0

Maximum

\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$7,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0.0%

Enhancement

Subtotals 2, 3, & 7

\$0

Notes

No adjustment for compliance history.

Culpability

No

0.0%

Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments

Subtotal 5

\$0

Economic Benefit

Total EB Amounts \$57

Approx. Cost of Compliance \$550

0.0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6

\$0

SUM OF SUBTOTALS 1-7

Final Subtotal

\$7,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

\$7,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$7,000

DEFERRAL

20.0%

Reduction

Adjustment

-\$1,400

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$5,600

Screening Date 13-Mar-2012

Docket No. 2012-0672-IWD-E

PCW

Respondent Diamond S Cattle Company

Policy Revision 2 (September 2002)

Case ID No. 43785

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105708069

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (<i>number of counts</i>) | 0 | 0% |
| Emissions | Chronic excessive emissions events (<i>number of events</i>) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 13-Mar-2012

Docket No. 2012-0672-IWD-E

PCW

Respondent Diamond S Cattle Company

Policy Revision 2 (September 2002)

Case ID No. 43785

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105708069

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1), 305.125(17), and 319.7(d), and Texas Pollutant Discharge Elimination System Permit No. WQ0004878000, Monitoring and Reporting Requirements No. 1

Violation Description

Failed to submit monitoring results at the intervals specified in the permit, as documented during a record review conducted on February 28, 2012. Specifically, the Respondent failed to submit Discharge Monitoring Reports ("DMRs") for the monitoring periods ending January 31, 2011; February 28, 2011; March 31, 2011; April 30, 2011; May 31, 2011; June 30, 2011; and July 31, 2011, by the 20th day of the following month.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| | | Harm | | | Percent |
|-----------|--|-------|----------|-------|---------|
| Release | | Major | Moderate | Minor | |
| Actual | | | | | |
| Potential | | | | | 0% |

>> Programmatic Matrix

| | | Major | Moderate | Minor | Percent |
|---------------|--|-------|----------|-------|---------|
| Falsification | | | | | |
| | | x | | | 10% |

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 7 387 Number of violation days

| | | |
|----------------------------|--------------|---|
| mark only one with an x | daily | |
| | weekly | |
| | monthly | x |
| | quarterly | |
| | semiannual | |
| | annual | |
| | single event | |

Violation Base Penalty \$7,000

Seven monthly events are recommended, one for each DMR.

Good Faith Efforts to Comply

0.0% Reduction

\$0

| | Before NOV | | NOV to EDPRP/Settlement Offer |
|-----|---------------|----------|-------------------------------|
| | Extraordinary | Ordinary | |
| N/A | x | | (mark with x) |

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$57

Violation Final Penalty Total \$7,000

This violation Final Assessed Penalty (adjusted for limits) \$7,000

Economic Benefit Worksheet

Respondent Diamond S Cattle Company
Case ID No. 43785
Reg. Ent. Reference No. RN105708069
Media Water Quality
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

| | | | | | | | |
|--------------------------|-------|-------------|-------------|------|------|------|------|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | \$300 | 20-Feb-2011 | 31-Oct-2012 | 1.70 | \$2 | \$34 | \$36 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | \$250 | 20-Feb-2011 | 31-Oct-2012 | 1.70 | \$21 | n/a | \$21 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to prepare and submit the DMRs (\$25 each), update operational guidance, and conduct employee training. Date required is date the first report was due. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$550

TOTAL

\$57

Compliance History Report

| | | | | |
|---|---|---|---------------------------------------|---------------------------|
| Customer/Respondent/Owner-Operator: | CN603347006 | Diamond S Cattle Company | Classification: AVERAGE | Rating: 2.25 |
| Regulated Entity: | RN105708069 | PORTABLE ROCK CRUSHING PLANT FM 919 SITE | Classification: AVERAGE BY DEFAULT | Site Rating: 3.01 |
| ID Number(s): | WASTEWATER WASTEWATER | EPA ID PERMIT | | TX0131920 WQ0004878000 |
| Location: | located on the east side of Farm-to-Market Road 919, approximately 0.5 mile South of the junction of Farm-to- Market 919 and United States Highway 180, Palo Pinto County, Texas | | | |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | | |
| Date Compliance History Prepared: | March 13, 2012 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | March 13, 2007 to March 13, 2012 | | | |

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Steve Villatoro Phone: (512) 239-4930

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 03/07/2012 (989356)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DIAMOND S CATTLE COMPANY
RN105708069**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2012-0672-IWD-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Diamond S Cattle Company ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a quarry and portable rock crusher located on the east side of Farm-to-Market Road 919, approximately 0.5 mile south of the junction of Farm-to-Market 919 and United States Highway 180, Palo Pinto County, Texas (the "Facility").
2. The Facility adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 12, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Thirteen Thousand Two Hundred Fifty Dollars (\$13,250) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Ten Thousand Six Hundred Dollars (\$10,600) of the administrative penalty and Two Thousand Six Hundred Fifty Dollars (\$2,650) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to submit monitoring results at the intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1), 305.125(17), and 319.7(d), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004878000, Monitoring and Reporting Requirements No. 1, as documented during a record review conducted on February 28, 2012. Specifically, the Respondent failed to submit Discharge Monitoring Reports ("DMRs") for the monitoring periods ending January 31, 2011; February 28, 2011; March 31, 2011; April 30, 2011; May 31, 2011; June 30, 2011; July 31, 2011; August 31, 2011; September 30, 2011; October 31, 2011; November 30, 2011; and December 31, 2011, by the 20th day of the following month.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Diamond S Cattle Company, Docket No. 2012-0672-IWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order:

- i. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of completed, signed, and certified monthly DMRs in accordance with TPDES Permit No. WQ0004878000, Monitoring and Reporting Requirements No. 1.
- ii. Submit the missing DMRs for the monitoring periods ending on January 31, 2011; February 28, 2011; March 31, 2011; April 30, 2011; May 31, 2011; June 30, 2011; July 31, 2011; August 31, 2011; September 30, 2011; October 31, 2011; November 30, 2011; and December 31, 2011 to:

Compliance Monitoring Team
Enforcement Division, MC 224
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provision Nos. 2.a.i and 2.a.ii. The written certification of compliance shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals

immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

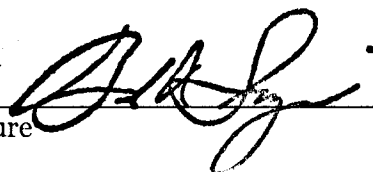
9/4/12
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

6/6/12
Date

Bob R Simpson
Name (Printed or typed)
Authorized Representative of
Diamond S Cattle Company

President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.